IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.990 OF 2005
IN
NOTICE OF MOTION NO.295 OF 2005
IN
WRIT PETITION NO.1696 OF 2005

Amit Kumar. ... Appellant
(Orig. Respondent)

V/s.

Indian Airlines Ltd. ... Respondent
(Orig. Petitioner)

Mr.Mohan Bir Singh for appellant.

Mr.S.M.Dixit with Mr.Sudeep Dasgupta for respondent.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 19th December 2005

ORAL JUDGMENT : (Per H.L.Gokhale, J.)

1. Heard Mr.Singh in support of this Appeal. Mr.Dixit appears for the respondent.

2. This Appeal seeks to challenge the order dated 20th July 2005 passed by a learned Single Judge on Notice of Motion No.295 of 2005 taken out in Writ Petition No.1696 of 2005. The Motion was taken out for appropriate wages under Section 17B of the Industrial Disputes Act, 1947. The learned Single Judge has awarded an amount of Rs.4880/- only which was the basic wage of the appellant when he was removed from service. It is the case

of the appellant that this amount is much less than what ought to have been awarded and, therefore, the present Appeal has been filed.

3. Mr.Dixit, learned Counsel appearing for the respondent-Indian Airlines, has agreed on instructions that the Appeal be heard and disposed of finally at the admission stage itself. Therefore, it is heard finally at the admission stage.

4. The short facts leading to this Appeal are as follows:-

. The appellant was working as a senior Office Assistant. It was alleged that on 17th March 1996 while working at the Safdarjung Airport, New Delhi, he unauthorizedly opened the office for disposal of one jeep and six other vehicles. Since these vehicles were not in working condition, he sought to remove them with the help of the crane. A departmental enquiry was held. The appellant was held guilty of the charges for not maintaining integrity and devotion to duty as well as theft, fraud and dishonesty in connection with the property of the employer and was ordered to be removed on 24th June 2002.

5. Inasmuch as some disputes between the workman and the respondent-Indian Airlines were pending, the respondent applied for approval under Section 33(2)(b) of the Industrial Disputes Act. The Tribunal declined to grant approval, principally for three reasons viz. (i) that according to the Tribunal there were violation of principles of natural justice, (ii) the order was not justified on merits and (iii) that the amount which is required to be paid at the time of removal from service viz. one month's wages as provided under the proviso to Section 33(2)(b) was not correctly paid in the sense he was paid Rs.195/- less.

6. This order of the National Industrial Tribunal was challenged by the respondent by filing a Writ Petition in this Court being Writ Petition No.1696 of 2005. That Petition was admitted by a learned Single Judge on 6th May 2005 who granted stay of the impugned Award.

7. It is material to note that prior to filing this Petition in High Court, the respondent had filed an SLP to the Apex Court being Petition for Special Leave to Appeal (Civil) No.25277 of

2004. The Apex Court had granted stay of the Award initially on 17th December 2004. However, subsequently the Petition was dismissed as withdrawn on 25th April 2005 with liberty to the respondent to approach the High Court under Article 226 / 227 of the Constitution. As stated above, a Petition was thereafter filed in this High Court and was admitted and stay was granted on 6th May 2005.

8. The appellant herein took out a Motion being Notice of Motion No.295 of 2005 for grant of the appropriate wages under Section 17B of the Industrial Disputes Act. The Motion was heard by a learned Single Judge. From the order of the learned Single Judge it is seen that he referred to the judgments rendered by Calcutta, Gujarat and Andhra Pradesh High Courts and also that of a learned Single Judge of this Court. In **Air India vs. P.K. Upadyaya & ors. reported in 1999 II CLR 276** a learned Single Judge of this Court has held that if the section is not applicable, the Court is still entitled to direct payment of appropriate wages. In the order impugned before us, the learned Judge noted that no affidavit in reply had been filed. He, therefore, directed the respondent to pay the amount of Rs.4880/- being

the basic wage from the date of the Motion i.e. from May 2005 and continue to pay that amount till the disposal of the Petition. The Appellant herein is aggrieved by this order and hence, this Appeal has been filed.

9. Mr.Mohan Bir Singh, learned Counsel appearing for the respondent, pointed out that Section 17B of the Industrial Disputes Act has been brought on to the statute basically to tide over the difficulties of the workmen who have succeeded in the Labour Court or the Tribunal and when the order in their favour is challenged and stayed either by the High Courts or the Supreme Court. He drew our attention to the judgment of the Apex Court in **Dena Bank vs. Kiritkumar T. Patel reported in 1998 1 CLR 191**. The Apex Court has authoritatively pronounced as to what is the connotation of Section 17B and has held that the words "full wages last drawn" must be given their plain and material meaning i.e. wages only at the rate last drawn. The Court has further held that it will not be the wages at the rate at which the wages are being paid to the workmen who are actually working. Thus, in the instant case, the appellant under that judgment would be entitled to the wages which he was drawing at the time of his

removal on 24th of June 2002.

10. As far as the components of these wages are concerned in paragraph 23 the Apex Court laid down that one will have to refer to the definition of Section 2(rr) of the Industrial Disputes Act which reads as follows:-

> " (rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes-
>
> (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;
>
> (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
>
> (iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both;

but does not include-

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service. "

The Court has laid down that these wages are to be paid as a sort of subsistence allowance and that being so, they are not refunded in the event the employer succeeds in the Writ Petition.

11. Mr.Singh has further submitted that the present case is one where the Tribunal has declined to grant approval. The consequences of such an order came to be authoritatively declared by the Apex Court in **Jaipur Zila Sahakari Bhoomi**

Vikas Bank Ltd. vs. Ram Gopal Sharma & ors. reported in (2002) 2 S.C.C. 244. The Apex Court has declared that non approval of the order of discharge or dismissal will mean that the employee continues to be in service as if the order of discharge or dismissal was never passed. In paragraph 14 thereof, the Court has observed as follows:-

> "... Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. .... "

Mr.Singh has pointed out that this view of the Constitutional Bench of the Apex Court has been reiterated in **Indian Telephone Industries Ltd. & anr. vs. Prabhakar H. Manjuare & anr. reported in (2003) 1 S.C.C. 320**. The Court has again reiterated that the refusal to approve an order of dismissal will make the dismissal order void and inoperative.

12. Based on these submissions, Mr.Singh has drawn our attention to the affidavit in lieu of

examination in chief on behalf of the respondent filed in the National Industrial Tribunal. The same was affirmed by one Ramlal Taneja, officiating Manager (Finance) on 28th April 2004. This affidavit gave the details of last drawn wages of the appellant. They are as follows:-

Basic	Rs.4,880/-
VDA	Rs.4,011/-
Product. Alc.	Rs. 635/-
C.C.A.	Rs. 100/-
H.R.A.	Rs.1,464/-
Special Alc.Qty.Pay	Rs. 150/-
Conveyance Alc.	Rs. 150/-
Reim. of kit Maint.Alc.	Rs. 265/-
Educational Allowance	Rs. 350/-
Computer Allowance	Rs. 225/-
	Rs.12,230/-

Mr.Singh, therefore, submits that in view of this law laid down by the Apex Court if the order of removal passed against the Appellant is void and inoperative, it means that the appellant is to be reinstated. Inasmuch as that order has been

challenged, the Petition has been admitted and the order has been stayed, the consequences under Section 17B ought to follow. He submits that consequently this amount of Rs.12,230/- be directed to be paid to the last drawn wage inasmuch as the appellant is unemployed and he has stated so on an affidavit.

13. Mr.Dixit, learned Counsel appearing for the respondent, submitted that Section 17B deals with the situation where the Labour Court, Tribunal or National Tribunal by its award directs reinstatement of a workman. He further submitted that the present case is one where the approval has been declined by the National Industrial Tribunal when the same was sought by the respondent herein. In his submission, these two situations are distinct. It is not possible to accept this submission inasmuch as the consequences of not granting approval is that the employee concerned will have to be reinstated. That is contemplated under Section 17B and the consequences of not granting approval has been clearly laid down by the Apex Court in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.'s case** which has been reiterated by it in **Indian Telephone Industries Ltd.'s case (both supra).**

14. Mr.Dixit submitted that the respondent had first approached the Apex Court by filing the SLP and the stay was granted therein which was an unconditional one and subsequently the SLP was withdrawn to file a Petition which is pending before the learned Single Judge. He further submitted that the Apex Court has not stated anything about the wages to be paid under Section 17B. In our view, the occasion to award the wages under Section 17B arises only when a Petition to challenge the award granted by the Labour Court or the Tribunal is admitted by High Court or the Supreme Court and the stay thereof is granted leading a workman to point out to the Court as to what are his difficulties and to apply for his last drawn wages. In the present case, an interim stay was granted by the Apex Court and subsequently it has permitted the respondent to file a Petition before the High Court and, therefore, the SLP was withdrawn. The Petition to challenge the Award of the Tribunal came to be admitted by the Single Judge of this Court only on 6th May 2005 when he granted stay pending the disposal of the Petition. It is at that stage that the appellant herein could have moved to apply for the last drawn wages under Section 17B.

This was applied by taking out the Motion. Therefore, the absence of any specific observation by the Apex Court while granting the interim stay cannot take away the right of the appellant to move for his wages under Section 17B of the Industrial Disputes Act.

15. Mr.Singh has drawn our attention to the various items which give a break-up of the wages which were paid to the appellant. Having seen the various items, in our view, the appellant would not be entitled to claim the production allowance which will be claimable when a workman participates in production process. Similarly the allowance for reimbursement of kit maintenance allowance and computer allowance could not be paid under this enabling provision. Mr.Singh has not been able to explain as to what is the special allowance / Qty pay.

16. In the circumstances, we hold that the appellant would be entitled to receive the wages under the caption Basic Pay, VDA, City Compensatory Allowance, House Rent Allowance, Conveyance Allowance and Educational Allowance. Basic pay has been specifically mentioned under the first part of Section 2(rr) of the Industrial

Disputes Act. Dearness Allowance has been mentioned under Section 2(rr)(i). City compensatory allowance and Educational allowance will come under the phrase "such allowances as the workman is for the time being entitled to" under Section 2(rr)(i). HRA will be referable to Section 2(rr)(ii) and conveyance allowance will be referable to Section 2(rr)(iii). When we calculate the amount against these items, the total will come to Rs.10,955/-. In our view, the appellant would be entitled to receive this amount as the last drawn wages under Section 17B of the Industrial Disputes Act from the date on which he took out the Motion for seeking the reliefs i.e. from 16th May 2005.

17. Accordingly, we modify the order dated 20th July 2005 passed by the learned Single Judge and thereby partly allow this Appeal and direct the respondent to pay wages as above from 16th May 2005 and from month to month during the pendency of the Writ Petition. The respondent-Indian Airlines is expected to clear the arrears of the appellant after deducting the amount that it has already paid under the order of the learned Single Judge.

18. The other prayer of the appellant is for medical benefits. He informs that his wife is working as a Secretary in the Indian Council of Medical Research. His submission is that if he is to be denied the medical facilities, those facilities could be claimed by his wife which she was not otherwise claiming since both of them could not get these facilities from the Central Government at the same time. He, therefore, makes a request that a letter may please be given to him that he is not getting the medical facilities. Mr.Dixit, on instructions, states that the appellant will be issued the necessary letter within two weeks. The arrears will be cleared within eight weeks.

19. Appeal is partly allowed in the aforesaid terms. However, there will be no order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)